

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

CERTIFIED COPY

ORACLE CORPORATION, ET AL.)	
)	NO. C 07-01658 PJH
PLAINTIFFS,)	
)	JURY TRIAL
VS.)	VOLUME 2
)	
SAP AG, ET AL.,)	PAGES 297 - 479
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
)	TUESDAY, NOVEMBER 2, 2010

(PAGES 297 THROUGH 312 ARE UNDER SEAL AND BOUND SEPARATELY)

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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1 AGO. AND IN IT, NUMBER -- STIPULATION NO. 1, TN STIPULATES TO
2 ALL LIABILITY ON ALL CLAIMS. THEREFORE STIPULATES TO ALL
3 LIABILITY ON ORACLE'S CLAIMS FOR COPYRIGHT INFRINGEMENT,
4 VIOLATIONS OF THE FEDERAL COMPUTER FRAUD AND ABUSE ACT. THAT
5 RELATES TO THE DOWNLOADING. CALIFORNIA'S COMPUTER DATA ACCESS
6 AND FRAUD ACT. THAT'S A PROVISION OF THE CALIFORNIA PENAL CODE,
7 ALSO RELATES TO DOWNLOADING. BREACH OF CONTRACT, INTENTIONAL
8 INTERFERENCE WITH CUSTOMER RELATIONSHIPS, AND A SERIES OF OTHER
9 CLAIMS.

10 SAP STIPULATES TO VICARIOUS LIABILITY ON THE
11 COPYRIGHT CLAIMS AGAINST TOMORROWNOW IN THEIR ENTIRETY. IN
12 ADDITION TO VICARIOUS LIABILITY, THEY'VE ALSO NOW STIPULATED TO
13 CONTRIBUTORY LIABILITY. THESE ARE NOW ALSO ORDERS OF THE
14 COURT -- AND YOU'LL SEE THE COURT'S STAMP AT THE END OF
15 DOCUMENTS IN YOUR BINDER. SO --

16 (DEMONSTRATIVE PUBLISHED TO JURY.)

17 **MR. HOWARD:** THE GOOD NEWS IS THAT IF THERE WEREN'T
18 THESE STIPULATIONS, WE WOULD HAVE TO TAKE A LOT MORE TIME TO GO
19 THROUGH ALL OF THE TECHNICAL LANGUAGE AND ALL OF THE TECHNOLOGY
20 INVOLVED, AND WE'D HAVE TO TAKE A FAIR AMOUNT OF TIME TO EXPLAIN
21 THAT. AND YOU WILL STILL HEAR SOME OF THESE TERMS AT THE EDGES,
22 BUT WITH LIABILITY BEHIND US, REALLY WHAT'S REQUIRED NOW IS FOR
23 THE JURY TO BRING ITS COMMON SENSE TO THINK ABOUT NOW, WHAT
24 SHOULD THE DAMAGES BE FOR THAT LIABILITY.

25 **AND SO WHAT I'D LIKE TO DO NOW IS GO THROUGH THE**

1 EVIDENCE THAT WE THINK WE'LL SHOW AND THAT WILL BE CONSIDERED IN
2 CALCULATING WHAT THOSE DAMAGES ARE.

3 (DEMONSTRATIVE PUBLISHED TO JURY.)

4 MR. HOWARD: IF YOU THINK ABOUT THE EVENTS, JANUARY
5 OF 2005, ORACLE BUYS PEOPLESOFT. AND AS THE EVIDENCE WILL SHOW,
6 SAP DECIDES TO BUY TOMORROWNOW KNOWING THAT IT'S INFRINGING.

7 IF THERE HAD BEEN -- IF THERE HAD BEEN A NEGOTIATION,
8 THE WAY THE SOFTWARE INDUSTRY WORKS -- YOU'LL HEAR EVIDENCE
9 ABOUT THIS -- YOU NEGOTIATE A LICENSE. I MEAN, THAT'S THE WAY
10 YOU DO IT IN FAIR COMPETITION. YOU SIT DOWN ACROSS THE TABLE
11 FROM EACH OTHER, LOOK EACH OTHER IN THE EYE, AND SAY, "ALL
12 RIGHT, I'D LIKE TO USE YOUR SOFTWARE."

13 "GREAT. HOW MUCH?"

14 RIGHT? YOU NEGOTIATE A LICENSE TO IT.

15 IN ORDER TO HAVE BEEN LEGALLY ENTITLED TO DO WHAT
16 THEY DID, SAP AND TOMORROWNOW NEEDED A LICENSE FROM ORACLE.
17 THEY NEVER ASKED FOR THAT LICENSE, AND THE EVIDENCE WILL SHOW
18 THAT THEY NEVER PAID FOR THEIR LICENSE. THE NEGOTIATION NEVER
19 HAPPENED. SO THE MEASURE -- SO IN THINKING ABOUT WHAT -- WHAT
20 THAT LICENSE SHOULD HAVE BEEN, WE THINK ABOUT WHAT THE FAIR
21 MARKET VALUE WAS AT THE TIME THAT THAT HAPPENED AND IN AND
22 AROUND THAT TIME.

23 THE FAIR MARKET VALUE IS A CONCEPT THAT I THINK
24 EVERYBODY, YOU KNOW, UNDERSTANDS. IT APPLIES TO A HOUSE. YOU
25 BUY A HOUSE, THERE'S A MARKET VALUE. SOMETIMES YOU NEGOTIATE.

1 YOU LOOK AT WHAT THE MARKET IS. BUY A CAR, THERE'S A MARKET
2 VALUE FOR THAT. SAME WITH SOFTWARE. THERE'S A MARKET VALUE FOR
3 THAT LICENSE.

4 AND THERE ARE SOME FACTORS THAT YOU LOOK AT IN
5 DECIDING WHAT THAT VALUE IS. HOW IMPORTANT AND VALUABLE DID SAP
6 EXPECT AT THE TIME? WHAT DID IT EXPECT WHEN IT WOULD HAVE BEEN
7 SITTING THERE? WHAT DID IT EXPECT TO GET FROM THE COPYRIGHTED
8 PROPERTY? AND WHAT WOULD ORACLE HAVE EXPECTED TO GET IF IT KNEW
9 AT THE TIME, A FEW DAYS AFTER IT HAD SPENT \$11 BILLION, THAT IT
10 WAS GOING TO BE FACING THE DOMINANT PLAYER IN THE SOFTWARE
11 MARKET USING THE IP THAT IT JUST BOUGHT?

12 WHEN SAP BOUGHT TOMORROWNOW, ITS BOARD OF DIRECTORS
13 CONSIDERED SOME THINGS. THE EVIDENCE WILL SHOW THAT THEY
14 CONSIDERED THE ENORMOUS BENEFITS THAT SAP WOULD GET AND THE
15 ENORMOUS HARM THAT THEY COULD CAUSE ORACLE.

16 AND I'M GOING TO SHOW YOU SAP'S OWN DOCUMENTS.
17 'CAUSE YOU'LL HEAR FROM WITNESSES, AND THEY'LL SAY WHAT THEY
18 SAY, BUT WE HAVE WHAT THEY WROTE AT THE TIME. THEY -- WE HAVE
19 WHAT THEY WROTE DOWN AS THEIR EXPECTATIONS FOR THEMSELVES AND AS
20 THEIR EXPECTATIONS FOR HOW THEY WOULD HARM ORACLE.

21 AND THOSE DOCUMENTS SHOW THAT THEY EXPECTED BOTH OF
22 THOSE THINGS, THE BENEFIT TO THEM AND THE HARM TO ORACLE, TO BE
23 IN THE BILLIONS OF DOLLARS.

24 ORACLE'S OWN DOCUMENTS ALSO SHOW THAT THE VALUE THAT
25 THEY PUT ON THOSE COPYRIGHTS WAS IN THE BILLIONS OF DOLLARS.

1 AND WE HAVE TO CONSIDER -- WE HAVE TO CONSIDER ALSO
2 IN TAKING ACCOUNT OF VALUE -- YOU HAVE TO CONSIDER THE RISK THAT
3 THE -- SAP BOARD OF DIRECTORS -- THE EVIDENCE WILL SHOW THE RISK
4 THAT THEY KNEW THAT THEY WERE TAKING, THE RISK OF KNOWINGLY
5 INFRINGING ORACLE'S COPYRIGHTS.

6 FOR A COMPANY LIKE SAP, TO TAKE THE RISK OF BEING
7 HERE IN COURT TODAY, HAVING NOW ADMITTED COPYRIGHT INFRINGEMENT,
8 THINK THE EVIDENCE WILL SHOW THAT THAT THING, THAT IP MUST HAVE
9 BEEN VERY VALUABLE TO THEM.

10 WHY? WHY WAS IT SO VALUABLE?

11 (DEMONSTRATIVE PUBLISHED TO JURY.)

12 **MR. HOWARD:** THIS DOCUMENT WAS APPROVED BY THE SAP
13 BOARD OF DIRECTORS. ONE DAY AFTER THEY ANNOUNCED THE
14 ACQUISITION OF TOMORROWNOW. THE GOAL THEY SAY WHAT THEIR GOAL
15 IS. THEY WANT TO CONVERT APPROXIMATELY 50 PERCENT OF THE
16 PEOPLESOFT AND JD EDWARDS' CUSTOMERS TO SAP. SO THAT ALMOST
17 10,000 CUSTOMERS THAT ORACLE WAS GETTING IN ITS \$11 BILLION
18 TRANSACTION FOR PEOPLESOFT, THE IDEA WAS LET'S -- WELL, EVIDENCE
19 WILL SHOW THAT THEY PLANNED TO TAKE TOMORROWNOW, OFFER THE
20 SUPPORT TO THOSE CUSTOMERS, BUT NOW TOMORROWNOW IS SAP, SO THE
21 CUSTOMERS ARE SAP CUSTOMERS, AND THEN WE'LL SELL THEM SAP
22 SOFTWARE.

23 THEY GET THE BENEFIT OF THE CUSTOMERS, ORACLE LOSES

24 THE BENEFIT OF THE CUSTOMER. AND THAT THREE -- THREE GOALS:

25 DISRUPT ORACLE'S ABILITY TO PAY FOR THE ACQUISITION. SHRINK

